

The Legal Status of Those who Provide First Aid

About this Guidance:

As a First Aid Trainer, it's usual to get asked about the legalities of providing first aid. Even if you don't introduce the topic, it's likely that a student will ask 'can I be sued?'

We hope that this document will give you an understanding of the legalities of providing first aid. The Resuscitation Council (UK) produced the original guidance, on which we have based this summary. This is intended as guidance for First Aid Trainers so that you can be confident when answering questions on the topic, but it is not intended that you should always go to this depth when discussing legalities with your students. The full Resuscitation Council UK document can be found here: <http://www.resus.org.uk/pages/legal.htm>

This information is intended to give an overview only, so you are advised to seek clarification of the law from a suitably qualified lawyer. Throughout this document the masculine is used to denote the masculine or feminine.

Introduction:

There are two types of legal duty that UK citizens must follow; Statutory Laws – that are imposed by Parliament; and Common Law – the law that has been built up over centuries as a result of decisions made by Judges in Court.

- There are no Statutory Laws relating to first aid, but potential liability can arise in Common Law.
- There have been some cases in the UK where a claim has been brought against a 'rescuer', although there have been no reported cases *in court* where a casualty has successfully sued someone.
- Out-of-court settlements are more common and go unreported, so it is likely that some claims against a rescuer have been 'successful', but these will have gone unreported.
- It should be noted that even if a first aider is successful in defending himself against a claim, it is unlikely that he will be able to recover the full legal costs in defending himself. In civil litigation, it is unusual for a court to award the successful party more than 80% of their costs and it's possible that an accusation can cost tens of thousands of pounds to defend.
- In some instances it can be less expensive to settle a claim out of court than to defend it. It is not uncommon for insurers to settle claims even when the defendant was innocent, as this is the least expensive and least risky option.

Consent – Assault and Battery:

- 'Battery' is a form of trespass against the person, which could include even light touching. The contact involved in performing a first aid procedure could constitute a battery if the casualty did not consent to it.
- Potentially there could be a liability for assault in criminal law, but this guidance will concentrate purely on civil liability and claims for compensation.

- If a casualty is unable to consent to treatment (e.g. they are unconscious) the medical profession would use 'implied consent' to defend their actions. They would argue that if the casualty was able to make a decision, they would have consented.
- It could be difficult, however, to imply that the casualty would have consented when the procedure is carried out by a non-professional first aider – and the less well trained the first aider the harder it may become to justify this defence. It becomes more difficult, for example, to argue that an unconscious casualty would consent to a relatively untrained person performing what is in effect a medical procedure, even if the procedure is relatively straightforward.

Duty of Care:

In order to sue a first aider for negligence, the casualty would first have to show that the rescuer owed him a 'duty of care'.

- In the UK (unlike some other European countries), if you witness a situation 'in the street' there is no legal requirement to assist, providing you didn't cause the situation. **As soon as you volunteer to give first aid, however, you assume a duty of care towards the casualty.**
- There are some relationships where a 'positive duty of care' exists, for example, a School Teacher has a duty of care to protect his pupils. A Police Officer has a duty of care to protect the public.
- Under the First Aid at Work Act, an employer has a statutory duty to provide first aiders in the workplace. Someone who takes on this role could be argued to owe a duty of care to his colleagues to provide first aid.

A Claim for Negligence:

Once a duty of care exists, to successfully sue a first aider the casualty would have to prove that the first aider left them in a worse condition than if they had done nothing whatsoever.

- As an example; if a first aider damaged the ribs when giving chest compressions to a casualty in cardiac arrest, they could not be sued, because if they had done nothing whatsoever the casualty would have no-doubt died. If the casualty was not *actually* in cardiac arrest, however, the injury *would* leave the casualty in a worse position and the first aider could be liable.

Standard of Care:

The next thing that a casualty would have to prove to successfully sue a first aider is that the standard of care was inadequate and it is for that reason that they were left in a worse position:

- The standard of care expected from a medical professional, a non-professional first aider and an untrained member of the public differ. The standard of care expected from a trained first aider is higher than someone who is untrained.
- If first aid is given correctly and in accordance with current guidelines, it is unlikely that a successful claim for negligence could be brought. If the procedure is carried out incorrectly, however, with disregard for modern accepted practice, it is possible that liability could arise.

Liability of Third Parties:

- It is possible that if a first aider carries out a procedure negligently, a third party could be pursued for damages, so there is a potential liability for those who teach first aid if it is taught incorrectly.
- In deciding if a first aid guideline is 'correct' the UK courts will look to see if the guideline is 'accepted as proper by a responsible body of medical opinion'. Even if it is a minority body of medical opinion, and even if another body of opinion takes a different view, such guidelines should be accepted by a UK court.
- If a training organisation certified a first aider as competent, when in fact that person was incompetent, then the training provider could be liable for any consequential harm suffered by a casualty.

Avoiding Liability:

Many countries, including a number of states in the USA, have what is known as 'Good Samaritan' laws, which gives people who provide emergency first aid various levels of immunity from legal liability. This is not currently the case in the UK.

Many workplace first aiders will have some form of protection from liability through their employer's liability insurance, but such insurance would usually only cover them whilst they are carrying out first aid at work on behalf of their employer. It might not for example extend to first aid off the premises. It is important therefore to check the extent of the cover, particularly when volunteering to give first aid outside of the normal place of work.

In Summary:

Fortunately it is difficult to sue a first aider in the UK, but not impossible. Even when innocent, defending a claim could be both worrying and expensive, so it is sensible to reduce the risk of liability. This can be done in two ways:

- 1) Follow accepted first aid guidelines.
- 2) Take out adequate indemnity insurance.